

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

QOMPLX LLC,
Patent Owner.

IPR2026-00183
Patent: 11,539,663

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S DISCRETIONARY DENIAL BRIEF**

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EXHIBIT LIST

LIST OF NEWLY-FILED EXHIBITS

Exhibits concurrently filed with Petitioner's Opposition To Patent Owner's

Discretionary Denial Brief:

No.	Description
1026	Complaint, <i>Qomplx LLC v. Microsoft Corp.</i> , Case No. 1:25-cv-01383-ADA (W.D. Tex.) (Aug. 28, 2025)
1027	United States District Courts Judicial Caseload Profile (excerpt)
1028	Judge Alan D. Albright Time to Trial, Docket Navigator (last visited Apr. 21, 2026)
1029	Return of Service (ECF No. 11), <i>Qomplx LLC v. Microsoft Corporation</i> , 1:25-cv-01383-ADA (W.D. Tex. Sept. 8, 2025)
1030	<i>Annual Report 2025</i> , Microsoft, available at: https://www.microsoft.com/investor/reports/ar25/index.html#
1031	President Trump's Cyber Strategy for America (March 2026)
1032	<i>Qomplx</i> website capture (March 26, 2026), available at: https://www.qomplx.com/
1033	<i>Department of Defense Announces Joint Warfighting Cloud Capability Procurement</i> , U.S. Dept. of Defense (Dec. 7, 2022), available at: https://www.war.gov/News/Releases/Release/Article/3239378/departments-of-defense-announces-joint-warfighting-cloud-capability-procurement/
1034	<i>Microsoft Digital Defense Report 2024 – The Foundations and New Frontiers of Cybersecurity</i> , Microsoft (2024), available at: https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/final/en-us/microsoft-

No.	Description
	brand/documents/Microsoft%20Digital%20Defense%20Report%202024%20%281%29.pdf
1035	<i>Microsoft Announces \$3.3 Billion Investment in Wisconsin to Spur Artificial Intelligence Innovation and Economic Growth</i> , Microsoft (May 10, 2024), available at: https://news.microsoft.com/source/2024/05/08/microsoft-announces-3-3-billion-investment-in-wisconsin-to-spur-artificial-intelligence-innovation-and-economic-growth/
1036	<i>Microsoft Makes New \$4B Data Center Investment in Wisconsin</i> , Government Technology (Sept. 24, 2025), available at: https://www.govtech.com/biz/microsoft-makes-new-4b-data-center-investment-in-wisconsin
1037	<i>Made in Wisconsin: The World's Most Powerful AI Datacenter</i> , Microsoft (Sept. 18, 2025), available at: https://blogs.microsoft.com/on-the-issues/2025/09/18/made-in-wisconsin-the-worlds-most-powerful-ai-datacenter/
1038	<i>Microsoft Digital Defense Report 2025 – Lighting the Path to a Secure Future</i> , Microsoft (2025), available at: https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/Microsoft-Digital-Defense-Report-2025.pdf
1039	Exhibit A to Qomplx's Preliminary Infringement Contentions (424 patent)
1040	Exhibit B to Qomplx's Preliminary Infringement Contentions (934 patent)
1041	Exhibit C to Qomplx's Preliminary Infringement Contentions (426 patent)
1042	Exhibit D to Qomplx's Preliminary Infringement Contentions (627 patent)

No.	Description
1043	Exhibit E to Qomplx's Preliminary Infringement Contentions (627 patent)
1044	Exhibit F to Qomplx's Preliminary Infringement Contentions (627 patent)
1045	Exhibit G to Qomplx's Preliminary Infringement Contentions (628 patent)
1046	Exhibit H to Qomplx's Preliminary Infringement Contentions (628 patent)
1047	Exhibit I to Qomplx's Preliminary Infringement Contentions (663 patent)
1048	Plaintiff Qomplx LLC's Preliminary Disclosure of Proposed Claim Constructions
1049	Microsoft Corporation's Opening Claim Construction Brief, <i>Qomplx LLC v. Microsoft Corp.</i> , Case No. 1:25-cv-01383-ADA (W.D. Tex.) (Mar. 23, 2026)
1050	Plaintiff Qomplx LLC's Responsive Claim Construction Brief, <i>Qomplx LLC v. Microsoft Corp.</i> , Case No. 1:25-cv-01383-ADA (W.D. Tex.) (Apr. 13, 2026)
1051	Ryan Autullo, "Judge Albright, Texas Patent Magnet, Leaving Bench In August (2)," Bloomberg Law, April 21, 2026, available at: https://news.bloomberglaw.com/litigation/trump-appointed-judge-albright-stepping-down-from-texas-bench

LIST OF PREVIOUSLY FILED EXHIBITS

No.	Description
1001	U.S. Patent No. 11,539,663 ("663 patent")
1002	File History of U.S. Patent No. 11,539,663

No.	Description
1003	Declaration of Mark Crovella, dated Jan. 13, 2026 (“ Crovella Decl. ” or “ Crovella ”)
1004	U.S. Patent App. Pub. No. 2015/0281355 A1 to Maturana et al. (“ Maturana ”)
1005	U.S. Patent App. Pub. No. 2012/0246639 A1 to Kashyap et al. (“ Kashyap ”)
1006	U.S. Patent App. Pub. No. 2015/0178113 A1 to Steven Dake (“ Dake ”)
1007	B. Sosinsky, <i>Cloud Computing Bible</i> (2011) (“ Sosinsky ”) (excerpts)
1008	U.S. Patent App. Pub. No. 2012/0216181 A1 to Arcese et al. (“ Arcese ”)
1009	U.S. Patent App. Pub. No. 2013/0152080 A1 to Sachindran et al. (“ Sachindran ”)
1010	X. Jin et al., <i>Reinventing Virtual Appliances</i> , IBM J. of Res. and Dev., 53(4), Paper 7 (2009) (“ Jin ”)
1011	S. Mastrianni et al., <i>IT Autopilot: A Flexible IT Service Management and Delivery Platform for Small and Medium Business</i> , IBM Sys. J., 46(3), at 609-24 (2007) (“ Mastrianni ”)
1012	U.S. Patent App. Pub. No. 2017/0366606 A1 to Ben-Shaul et al. (“ Ben-Shaul ”)
1013	U.S. Patent App. Pub. No. 2016/0048408 A1 to Madhu et al. (“ Madhu ”)
1014	Gabor Kecskemeti, et al., <i>Toward Efficient Appliance Delivery With Minimal Manageable Virtual Appliances</i> , IEEE Trans. On Services Computing, 7(2), at 279-92 (2014) (“ Kecskemeti ”)
1015	U.S. Patent No. 10,579,403 to Antony et al. (“ Antony ”)
1016	U.S. Patent App. Pub. No. 2007/0294676 A1 to Mellor et al. (“ Mellor ”)

No.	Description
1017	U.S. Patent App. Pub. No. 2019/0026138 A1 to Cao et al. (“ Cao ”)
1018	U.S. Patent App. Pub. No. 2019/0065213 A1 to Li et al. (“ Li ”)
1019	DMTF, <i>Open Virtualization Format White Paper</i> , ver. 1.0.0 (2009) (“ OVF-2009 ”)
1020	DMTF, <i>Open Virtualization Format White Paper</i> , ver. 2.0.0 (2014) (“ OVF-2014 ”)
1021	DMTF, <i>Open Virtualization Format Specification</i> , ver. 2.1.1 (2015) (“ OVF-2015 ”)
1022	U.S. Patent App. Pub. No. 2013/0283364 A1 to Chang et al. (“ Chang ”)
1023	Plaintiff Qomplx’s Preliminary Infringement Contentions (“ PICs ”)
1024	List of Challenged Claims
1025	Email from Erik Fuehrer, et al. dated January 15, 2026, regarding <i>Qomplx LLC v. Microsoft Corporation</i> , Case No. 1:25-cv-01383-ADA (“ Sotera-Plus Stipulation ”)

I. INTRODUCTION

The Director should not discretionarily deny institution. The '663 patent issued just over three years before the Petition was filed. The Examiner did not consider Maturana or Kashyap, which together render all challenged claims obvious, and this IPR would allow the Office to rectify the Examiner's error early in the '663 patent's life, making it precisely the kind of challenge the Office should encourage.

This is one of six IPRs that together challenge all asserted claims of six patents asserted against Petitioner Microsoft in parallel litigation. Each of the other five patents is less than two years old. *See* IPR2026-00182, -00184, -00298, -00325, -00326. The six patents span diverse, complex subject matter, making the Board the best venue to resolve the parties' prior art unpatentability disputes. The PTAB is also the only forum for adjudicating unpatentability of '663 patent claim 4, which is not currently asserted in district court. Thus, instituting these IPRs will minimize the chances that the challenged claims will be re-litigated in the future.

Finally, the *Fintiv* factors strongly weigh against discretionary denial. The risk of duplicative efforts or conflicting outcomes with the district court is low because (1) trial in the district court will likely not occur until 7–14 months after the final written decision (FWD), (2) Microsoft filed a *Tesla*-style *Sotera*-plus stipulation that eliminates any potential overlap, and (3) Judge Albright will likely stay the district court litigation if all six IPRs are instituted. Moreover, the district court case is in its

early stages, with expert discovery not set to begin until January 2027, and Microsoft filed the Petition promptly, almost two weeks before serving invalidity contentions.

Thus, the Director should deny Patent Owner's request for discretionary denial and review the merits of the Petition. IPR will allow the Office to evaluate—early in the '663 patent's life—previously unconsidered, highly-relevant prior art and correct material errors made during original examination. And IPRs on all six asserted patents will help to efficiently resolve the parties' disputes, minimizing future litigation over these young and wrongly issued patents.

II. STATEMENT OF FACTS

On August 28, 2025, Qomplx filed suit against Microsoft in the Western District of Texas, alleging infringement of six patents by at least seven different accused technologies. EX1026 (Complaint). The asserted patents implicate complex and diverse subject matter including virtual appliances, streaming data analysis, multi-dimensional databases, distributed computational graphs, transformation pipelines, multi-factor authentication, brute force attack detection, anomalous access detection, and attack path identification. *E.g.*, EX1026, ¶¶ 27-35, 62-68, 94-100, 126-133, 162-169, 196-203. The case has been assigned to Judge Albright. *E.g.*, EX2003, 6.

The '663 patent issued December 27, 2022, from an application filed May 14, 2019. EX1001, 1. Each of the other five asserted patents issued less than two years ago. *E.g.*, EX1026, ¶¶ 23, 58, 90, 122, 158.

Plaintiff served preliminary infringement contentions on November 24, 2025 (EX1023), identifying claim 1 as the asserted claim. EX1047. Microsoft served preliminary invalidity contentions on January 26, 2026. EX2003, 1-2. Final infringement and invalidity contentions are currently due July 20, 2026. *Id.*, 3. A *Markman* hearing is scheduled for June 1, 2026. *Id.* Fact discovery opens June 2, 2026, and closes December 14, 2026. *Id.*, 3-4. Expert discovery opens January 18, 2027, and closes March 15, 2027. *Id.*, 4.

On January 14, 2026, Microsoft filed its Petition challenging claims 1 and 4 of the '663 patent. Paper 2 at 1. Microsoft has filed IPR petitions challenging all asserted claims of the other five asserted patents. *See* IPR2026-00182, -00184, -00298, -00325, -00326.

On January 15, 2026, Microsoft made a *Tesla*-style *Sotera*-plus stipulation to not assert certain invalidity defenses in district court should the Board institute IPR and not subsequently vacate institution. EX1025. The stipulated defenses include any ground that reasonably could have been raised in this IPR and “any ground asserting a combination of system prior art with any reference asserted as part of a ground raised in [this IPR].” EX1025, 1-2.

This IPR has an institution decision deadline of July 22, 2026, and a projected FWD deadline of July 22, 2027. *See* Paper 6 (Notice of Filing Date Accorded).

Judge Albright has set a district court trial date of June 21, 2027. EX2003, 6. Median time-to-trial statistics for the Western District of Texas, however, suggest a trial date on or about February 11, 2028.¹ EX1027. Statistics from Docket Navigator for the past two years indicate a 37-month median time-to-trial for Judge Albright, which would put trial on or about September 28, 2028. EX1028.

III. ARGUMENT

Discretionary denial is not appropriate based on a holistic evaluation of the *Fintiv* and other discretionary factors.

A. The Recent Issuance Of The '663 Patent Weighs Against Discretionary Denial

Discretionary denial is inappropriate at least because the '663 patent issued just over three years before the Petition was filed. EX1001, 1; Paper 2 at 1. Early challenges like this “favor robust, predictable patent rights and weigh against

¹ Petitioner notes that its earlier discretionary denial oppositions in IPR2026-00182 and -00184 incorrectly indicate a median time-to-trial of 24.0 months, and thus an incorrect estimated August 2027 trial date, rather than the correct median time-to-trial of 29.5 months, which yields a February 2028 estimated trial date. IPR2026-00182, Paper 11 at 10; IPR2026-00184, Paper 12 at 9-10.

discretionary denial.” *Ascentcare Dental Products, Inc. v. Solmetex, LLC*, IPR2025-01104, Paper 11 at 2 (Acting Director Oct. 17, 2025). Consistently, Patent Owner does not allege settled expectations.

B. IPR Should Be Instituted To Correct Examiner Errors

Patent Owner does not dispute that the Examiner erred in failing to uncover Maturana or Kashyap and in issuing the challenged claims without searching for the additional claim elements added during prosecution, as explained in the Petition. Paper 2 at 2, 19-20. As explained in the Petition, prosecution lasted just three months, with only a limited prior art search that did not include crucial search terms such as “virtual appliance software application” or any terms relating to the “functions of the midserver,” such as applying a plurality of transformations to data, all of which were added through claim amendments. Paper 2 at 19-20; *e.g.*, EX1002, 411/497, 415/497. As a result, the Examiner failed to uncover relevant prior art, including the Maturana and Kashyap references that together render the challenged claims obvious. Paper 2 at 19-20; *see also* EX1002, 426-430/497. Under such circumstances, discretionary denial is inappropriate. *See e.g.*, *Microsoft Corp. v. ParTec AG*, IPR2025-00318, Paper 9 at 2-4 (Acting Director Jun. 12, 2025) (finding it an appropriate use of Office resources to review the potential error even when the district court trial date preceded the FWD); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00466, Paper 12 at 2-3 (Acting Director Jul. 16, 2025) (denying request

for discretionary denial based in part on material error during prosecution despite a district court trial date preceding the FWD deadline by seven months).

Had the Examiner properly searched the prior art, Maturana and Kashyap should have been uncovered because Maturana expressly discloses a cloud agent receiving data over a local network, applying a plurality of transformations to the data, and transmitting the data over a secure connection to a cloud service, while Kashyap expressly discloses a virtual appliance software application and its automatic installation and configuration. EX1004, [0002], [0044]; EX1005, [0003], [0020]; Paper 2 at 37-58.

Despite the applicant heavily amending the independent claims to delete entire claim limitations and add numerous new elements (EX1002, 411-412/497), the Examiner did not adapt the search strategy to reflect the substantial changes to the claim language; instead, the Examiner used the *exact same search queries* before and after the claim amendments. EX1002, 426-430/497; Paper 2 at 20. Consequently, the amended claims were allowed despite being effectively unexamined with respect to the prior art.

**C. The Complex And Diverse District Court
Litigation Further Weighs Against Discretionary Denial**

Discretionary denial is inappropriate because the district court litigation involves six patents spanning diverse and complex subject matter, non-overlapping inventors, and at least seven accused products. *Supra* pp. 2-3; *see Tesla, Inc. v. Intell.*

Ventures II LLC, IPR2025-00217, Paper 9 at 2-3 (Acting Director Jun. 13, 2025) (informative) (finding that the “complex and diverse [district court] litigation” involving “eleven patents spanning nine different families that involve a diverse range of subject matter” “tip[ped] the balance against discretionary denial”); *Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 at 3 (Acting Director Jul. 17, 2025) (fact that district court litigation involved nine patents spanning six families involving a diverse range of subject matter weighed against discretionary denial); *Samsung Elecs. Co. v. Wilus Inst. of Standards and Tech. Inc.*, IPR2025-00933, Paper 11 at 3 (Deputy Director Oct. 10, 2025) (finding that the parallel district court proceeding’s twelve patents spanning eight families with a diverse range of subject matter weighed against discretionary denial).

Microsoft has challenged all six patents asserted in district court: U.S. Patent Nos. 12,218,934 (IPR2026-00182), 11,539,663 (IPR2026-00183), 12,231,426 (IPR2026-00184), 12,143,424 (IPR2026-00298), 12,301,627 (IPR2026-00325), and 12,301,628 (IPR2026-00326). *See* EX1026 at 2 (Qomplx’s complaint); EX1023 (Qomplx’s preliminary infringement contentions). The challenged patents cover diverse subject matter, including multi-factor authentication (’934 and ’426 patents), data ingestion using a midserver (’663 patent), data processing using computational graphs (’424 patent), and cybersecurity attack path and threat detection analysis (’627 and ’628 patents). EX1001; EX1026, ¶¶ 27-35, 62-68, 94-100, 126-133, 162-

169, 196-203. This diverse subject matter is reflected in four different groups of named inventors, as well as the fact that Patent Owner accuses at least seven different accused products. EX1023; EX1026, ¶¶ 24, 59, 91, 123, 159, 193; EX1039-EX1047.

D. The *Fintiv* Factors Weigh Against Discretionary Denial

No *Fintiv* factor favors discretionary denial, and most weigh against denial.

1. Factor 1 (Stay) Weighs Against Denial Or Is Neutral

If all six IPRs are instituted, then Factor 1 will weigh against denial because Judge Albright is likely to grant a motion to stay² in such circumstances. *See, e.g., ParkerVision, Inc. v. NXP Semiconductors N.V.*, No. W-23-CV-00389-ADA, ECF No. 110 (W.D. Tex. May 27, 2025) (Judge Albright granting motion to stay even though fact discovery was set to close in approximately one month because IPRs had been instituted on all asserted claims and would therefore simplify the case if successful in invalidating the asserted claims); *Lone Star SCM Sys., Ltd. v. Zebra Techs. Corp.*, No. 6:21-cv-00842-ADA, ECF No. 85 (W.D. Tex. Jul. 31, 2023) (Judge Albright granting motion to stay because, based on the PTAB's institution

² In accordance with standard practice before Judge Albright, Microsoft plans to file a motion to stay once the Board issues institution decisions. This may change given the announcement that Judge Albright intends to step down from the bench at the end of August 2026. EX1051.

decision, it was likely that all asserted claims would be invalidated); *Sonrai Memory Ltd. v. Western Digit. Techs., Inc.*, No. 6:21-cv-01168-ADA, ECF No. 104 (W.D. Tex. Aug. 4, 2022) (Judge Albright granting motion to stay despite the “advanced stage” (*id.*, at 8) of the district court action because, based on the PTAB’s institution decisions, it was likely that all asserted claims of all asserted patents would be invalidated).

At worst, this factor is neutral since the Board “will not attempt to predict how the district court in the related district court litigation will proceed.” *Sand Revolution II, LLC v. Cont’l Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (PTAB Jun. 16, 2020) (informative) (finding Factor 1 to be neutral where Petitioner had not yet filed a motion to stay in the district court proceeding).

**2. Factor 2 (Trial Date) Weighs
Against Denial Because Statistics Suggest
Trial Will Occur After The Final Written Decision**

Factor 2 weighs against discretionary denial because statistics indicate the district court trial will occur seven to fourteen months after issuance of the final written decision (FWD). *See, e.g., Volkswagen Grp. of Am. Inc. v. Longhorn Auto Grp. LLC*, IPR2025-01064, Paper 9 at 2 (Acting Director Oct. 10, 2025) (Factor 2 neutral where scheduled district court trial date was over four months before FWD but median time-to-trial statistics suggested trial would begin weeks after the FWD).

Here, Judge Albright's tentative trial date of June 21, 2027 (EX2003, 6) precedes the estimated FWD deadline of July 22, 2027 (Paper 6) by about a month.³ The most recent Western District of Texas median time-to-trial statistics, however, put trial in February 2028—around seven months after the estimated FWD deadline. EX1027 (median time-to-trial of 29.5 months). Docket Navigator statistics for Judge Albright's last two years put trial even later, in September 2028—fourteen months after the FWD deadline. EX1028 (median time-to-trial of 37 months).⁴

**3. Factor 3 (Investment) Weighs Against Denial
Because Microsoft Filed Its Petitions Quickly And
The District Court Litigation Is In Its Early Stages**

Factor 3 weighs against discretionary denial at least because, by the institution decision deadline of July 22, 2026, there will have been minimal investment in the district court litigation. Although the district court will have held a *Markman* hearing, by that date the parties will have just served final contentions, fact discovery will have just opened, with five months remaining until closure on December 14,

³ The tentative district court trial date is uncertain given the announcement that Judge Albright intends to step down from the bench at the end of August 2026. EX1051.

⁴ Patent Owner cites Judge Albright statistics dating back to January 2021 (EX2022), which do not accurately reflect recent time-to-trial trends.

2026, and initial expert reports will not be due for another six months, on January 18, 2027. EX2003, 3-4.

Under these circumstances, Factor 3 weighs against denial. *See, e.g., SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01432, Paper 14 at 8-9 (PTAB Apr. 7, 2025) (finding Factor 3 favored institution even after *Markman* briefing was complete and where expert discovery was set to close only two months after the institution decision deadline); *Samsung Display Co., Ltd. v. Pictiva Displays Int’l Ltd.*, IPR2024-01222, Paper 12 at 7 (PTAB Mar. 6, 2025) (finding Factor 3 weighed against denial, even though a *Markman* hearing had been held, in part because “much remain[ed] to be done, including expert discovery”).

Patent Owner’s cited cases are inapposite. In one, fact discovery was about half-completed at the time of the institution decision. *NXP USA, Inc. v. Redstone Logics LLC*, IPR2025-00485, Paper 7 at 4, 9 (PTAB May 12, 2025). In another, the parties had already conducted over seven months of fact discovery. *AMD, Inc. v. Concurrent Ventures, LLC*, IPR2025-00223, Paper 9 at 2 (PTAB June 12, 2025). In the third case cited by Patent Owner, the parties had already served expert reports and conducted depositions. *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3 (PTAB Mar. 28, 2025). Here, fact discovery opens just before the institution decision deadline and expert discovery will not open until six months after institution. EX2003, 3-4.

Microsoft’s diligence further weighs against discretionary denial, as it filed the Petition nearly two weeks before serving preliminary invalidity contentions and over seven months before the one-year statutory deadline. *Samsung Display Co., Ltd. v. Pictiva Displays Int’l Ltd.*, IPR2024-01222, Paper 12 at 7 (PTAB Mar. 6, 2025) (“[D]iligence in filing ... approximately 7 months before the one-year statutory deadline weighs against discretionary denial.”); *Applied Materials, Inc. v. Ocean Semiconductor LLC*, IPR2021-01344, Paper 17 at 26 (PTAB Feb. 9, 2022) (weighing Factor 3 slightly against discretionary denial at least in part because of “Petitioner’s diligence in filing the Petition before any of the invalidity contentions deadlines”). The Complaint was served September 4, 2025 (EX1029), and Microsoft filed the Petition on January 14, 2026 (Paper 6, Paper 2) before serving preliminary invalidity contentions on January 26, 2026 (EX2004, 148).

4. Factor 4 (Overlap) Weighs Against Denial Because Microsoft’s *Sotera-Plus* Stipulation Prevents Overlap And Because Many Claims Are At Issue Only Before The Board

Microsoft’s *Sotera-plus* stipulation (EX1025) is of the type found by the Acting Director to be “broad” and to “counsel against discretionary denial.” See *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00217, Paper 9 at 2 (Acting Director Jun. 13, 2025).

As in *Tesla*, Microsoft’s stipulation would maintain IPR as a true alternative to district court by effectively barring any printed publication prior art defenses and

system prior art defenses involving the same publications that form the IPR's grounds. This stipulation eliminates possible overlap and thus avoids the "two bites at the apple" argued by Patent Owner. Confirming this, Patent Owner has not identified any overlap that would remain given Microsoft's stipulation. *See* Paper 10 at 8-11. Patent Owner cites the *Cyandia* decision denying institution but—unlike here—that case involved a petition that presented grounds that relied on publications describing the same IBM prior art system relied on in a district court defense. *SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01496, Paper 13 at 8-9 (PTAB Apr. 7, 2025).

Patent Owner's suggestion that petitioners must forfeit all prior art invalidity defenses in district court ignores existing Office practice, which imposes no such requirement, and would leave Microsoft with nowhere to raise its system art defenses. *See* 35 U.S.C. § 311(b). Patent Owner admits that Microsoft's "district court invalidity contentions do not expressly list any system art" yet still faults Microsoft because those contentions identify publications (not relied on in this IPR) that may describe prior art systems. Paper 10 at 9. But this ignores that final invalidity contentions are not due until July 20, 2026, and may include non-publication evidence, such as source code, the prior art systems themselves, and deposition testimony, none of which could be used as part of an IPR ground.

Stipulation aside, one of the two challenged claims is not asserted in district court and thus IPR would resolve substantial issues that the district court will not.

Compare Paper 2 at 2-3 *with* EX1047 (asserting claim 1); *see Apple Inc. v. Seven Networks, LLC*, IPR2020-00156, Paper 10 at 17 (PTAB Jun. 15, 2020) (weighing Factor 4 against discretionary denial because only four of twelve challenged claims were asserted in district court).

Further, looking at all six asserted patents, only a fraction of the 98 challenged claims⁵ will ever be tried since Judge Albright typically allows no more than ten claims to go to trial. *E.g., Quartz Auto Techs. LLC v. Lyft, Inc.*, No. 1:20-cv-00719-ADA, ECF No. 343 (W.D. Tex. Mar. 5, 2026) (5 claims tried); *Katana Silicon Techns. LLC v. GlobalFoundries, Inc.*, No. 1:22-cv-00852-ADA, ECF No. 318 (W.D. Tex. July 18, 2025) (3 claims tried); *WSOU Invs., LLC v. Cisco Sys., Inc.*, No. 6:21-cv-00128-ADA, ECF No. 281 (W.D. Tex. Feb. 12, 2025) (3 claims tried).

Thus, at best, the district court litigation might resolve the validity of just a small fraction of the challenged claims, which further reduces concerns of overlap and weighs Factor 4 even more against discretionary denial. Instituting IPR,

⁵ Across the six IPRs, Microsoft challenges 98 total claims, 37 of which are unasserted in district court. EX1023; EX1039–EX1047; Paper 2 at 3; IPR2026-00184, Paper 2 at 3; IPR2026-00182, Paper 2 at 3; IPR2026-00298, Paper 2 at 2-3; IPR2026-00325, Paper 2 at 2-3; IPR2026-00326, Paper 2 at 2.

however, would provide a more comprehensive early review of these recently issued patents and minimize the need to re-litigate the patents' validity in the future.

**5. Factor 5 (Same Party) Weighs Against Denial,
As The Projected Trial Date Falls After The Projected FWD**

As explained above for Factor 2, median time-to-trial statistics suggest a trial date seven to fourteen months after the projected FWD deadline of July 22, 2027. *Supra* Section III.D.2. Under these circumstances, Factor 5 weighs against discretionary denial, even though the parties here are the same as in district court. *See, e.g., Samsung Elecs. Co. v. Staton Techiya, LLC*, IPR2022-00302, Paper 13 at 18-19 (PTAB Jul. 11, 2022) (finding factor 5 weighed against discretionary denial despite same parties, because the Board's "statutory deadline falls before the Court's expected trial date based on the most recent median time-to-trial statistics").

6. Factor 6 Weighs Against Discretionary Denial

The additional factors discussed above in Sections III.A-C all weigh against discretionary denial. In addition, the merits of the Petition are strong. The prior art references (Maturana and Kashyap) render the challenged claims obvious. Paper 2 at 21-61. The claimed concepts were also well known in the art, as shown by numerous background references noted by Microsoft's expert, further demonstrating the strength of the Petition's obviousness grounds. Paper 2 at 3-15; EX1003, ¶¶ 30-42. Patent Owner's discretionary denial request does not assert otherwise. After the Petition was filed, in district court Patent Owner has argued a narrowing construction

for the claimed “midserver,” in an apparent attempt at evading the prior art. EX1048; EX1049, 5-11; EX1050, 2-10. With this argument, Patent Owner seeks to reintroduce via claim construction language that was deleted from the claims via amendment during prosecution. EX1002, 411/497; EX1048, 3; EX1050, 2-10. This argument should be rejected because in prosecution the applicants unequivocally stated that they amended the claim “to more clearly teach the functions of the midserver.” *Id.*, 415/497 (“The amendments now clearly teach the operation of the midserver.”). Further, midserver requires no construction because the claims already define the midserver and its operation, as the applicants told the public in prosecution. *Id.* Indeed, the claimed midserver and its components make up the entirety of claim 1 after the preamble. Patent Owner’s misguided claim construction argument further confirms the strength of the Petition’s merits.

Though Patent Owner alleges “substantial” success (Paper 10 at 14-15), all indications are that it is a failed company with no product offerings. Dr. Sellers is no longer with the company (Paper 10 at 13), Patent Owner’s website does not advertise any products or services (EX1032), and there is no indication that Qomplx has many or any employees. Patent Owner’s cited exhibits allegedly showing success (EX2013–EX2015) are stale (from 2021 or earlier). Only one of these exhibits suggests any revenue but that exhibit supposedly comes from an unverified third party website and, even if taken at face value, suggests that QOMPLX had no net

income. EX2013, 3 (“QOMPLX did not mention EBITDA or net income in [] its list of financial metrics.”) (parenthetical omitted). Patent Owner has not alleged any secondary considerations of nonobviousness, either in district court or elsewhere.

Microsoft, on the other hand, is a preeminent American technology company that invests heavily in U.S. jobs and infrastructure, including an estimated more than \$7 billion in Wisconsin-based data centers between 2024 and 2028. EX1030, 6, 27 (approximately 55% of Microsoft’s workforce and 62% of its long-lived assets are based in the US); EX1033, 1; EX1034, 6-7; EX1035, 1 (Microsoft’s \$3.3 billion investment in a state-of-the-art data center campus in Mount Pleasant, Wisconsin “is expected to bring an influx of 2,300 union construction jobs” and be a “watershed moment for Wisconsin.”); EX1036, 1 (Microsoft planning to spend an additional \$4 billion between 2025 and 2028 to build a second data center near the existing facility in Mount Pleasant); EX1037, 1 (same); EX1038, 6-7. It is also a leading innovator in cybersecurity that protects America’s national security interests. Microsoft systems protect our nation from many unique threat groups, including foreign state actors from China, Russia, and North Korea. EX1034, 6-7, 12-13, 15-16; EX1038, 6-7, 39-40, 44-48. Microsoft has assigned over 34,000 full-time engineers to security initiatives, and is one of only four companies awarded the Department of Defense’s Joint Warfighting Cloud Capability (JWCC) contract. EX1033, 1; EX1034, 6; EX1038, 6.

Subjecting Microsoft to expensive district court litigation based on invalid patents from a defunct company only stifles innovation and hinders America's ability to stay ahead of foreign rivals in the rapidly developing cybersecurity arms race. EX1031, 5 (explaining how President Trump's cyber strategy involves working with the private sector to sustain superiority in critical and emerging cybersecurity technologies). Instead, Microsoft seeks to resolve Patent Owner's meritless lawsuit in a more efficient manner at the PTAB, in line with the purpose of the IPR statute.

IV. CONCLUSION

The Director should deny Patent Owner's request for discretionary denial and review this IPR for consideration on the merits. IPR on this young, barely examined patent would allow the Office to correct the Examiner's material errors early in the '663 patent's life. More broadly, institution of IPR on all six asserted patents would likely lead to a stay of the district court case before expenditure of significant resources. The Board is better suited than a jury to review the unpatentability of the patents' varied and complex subject matter. Final written decisions on these patents would greatly simplify, if not eliminate the need for, the district court litigation. Overall, IPR on the '663 patent—and the other five asserted patents—will provide a more efficient and cost-effective resolution to the parties' disputes.

Respectfully submitted,

Dated: April 22, 2026

By: /Andrew M. Mason/
Andrew M. Mason, Reg. No. 64,034

andrew.mason@klarquist.com
KLARQUIST SPARKMAN, LLP
Tel: 503-595-5300
Fax: 503-595-5301

Counsel for Petitioner

**CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6 (e)(4)**

The undersigned certifies that on April 22, 2026, **PETITIONER'S
OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL
BRIEF** and **EXHIBITS 1026 – 1051** were served on counsel for Patent Owner
via electronic mail as follows:

Kenneth Weatherwax
Parham Hendifar
Lowenstein & Weatherwax LLP
1016 Pico Boulevard
Santa Monica, CA 90405
Email: weatherwax@lowensteinweatherwax.com
hendifar@lowensteinweatherwax.com
Qomplx_IPRs@lowensteinweatherwax.com

By: /Andrew M. Mason/
Andrew M. Mason, Reg. No. 64,034
andrew.mason@klarquist.com
KLARQUIST SPARKMAN, LLP
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Tel: 503-595-5300
Fax: 503-595-5301

Counsel for Petitioner